

FYI – For Your Information

Consumer Use Tax

GENERAL INFORMATION

What is Consumer Use Tax?

Consumer Use tax is a complement to state sales tax. The state consumer use tax rate and the state sales tax rate are 2.9 percent.

Use tax must be paid by businesses **and** individuals who purchase goods when the seller did not or could not collect sales tax (for example, purchases from an out-of-state retailer who does not collect Colorado sales tax).

Colorado law requires that state sales or use tax be paid on all non-exempt tangible personal property that is sold, leased, or delivered in Colorado for use, storage, distribution or consumption in the state.

When is Consumer Use Tax owed?

Use tax is owed when the article purchased is used or made available for use after delivery is completed, as well as when keeping, storing, withdrawing from storage, moving, installing, or performing any other act by which control of the article is assumed by the purchaser. [§39-26-202, C.R.S.].

Sales tax must be collected on the sale of non-exempt goods by the seller when the seller possesses (or is required to possess) a license to collect the taxes of his/her taxing jurisdiction(s). When the purchaser takes possession of the item at the seller's location, all sales taxes imposed in that jurisdiction must be collected by the

seller. The buyer does **not** have the option of paying use tax to the taxing authority instead of paying sales tax to the seller.

Local Jurisdictions

State-administered local jurisdictions may impose a use tax only upon motor vehicles, and upon building materials and supplies used in construction projects within their jurisdictional boundaries.

The Colorado Department of Revenue collects state and Regional Transportation District/Scientific and Cultural Facilities District/Metropolitan Football Stadium District (RTD/CD/FD) use tax as well as the Rural Transportation Authority (RTA) sales/use tax, but does not administer or collect county or city use tax. Local use tax is paid directly to the taxing authority to which it is owed.

Rural Transportation Authority (RTA)

The Rural Transportation Authority (RTA) is a sales/use tax applicable to certain areas within Colorado. The sales tax is remitted on Form DR 0100 "Colorado Retail Sales Tax Return" in the Special District column. For more information see publication DR 1002 "Colorado Sales and Use Tax Rates" located on the Web at www.taxcolorado.com. This publication is revised annually in January and July. You can also obtain instructions for filing Consumer Use tax on form DR 0252 and form DR 0251 for RTA on the Web.



Colorado Department
of Revenue
Taxpayer Service Division
1375 Sherman St.
Denver, Colorado 80261

Forms and other services:
(303) 238-FAST (3278)
Assistance:
(303) 238-SERV (7378)

www.taxcolorado.com

Machinery and Machine Tools

RTD, CD, FD sales tax, **but not use tax**, is imposed upon machinery and machine tools even when those items are exempt from state sales and use tax. See FYI Sales 10 "Manufacturing Equipment Exemption."

Exemptions

Certain goods are exempt by statute from sales and use taxes. These include prescription drugs, newsprint, and sales to government and charitable organizations. See Colorado Revised Statutes 39-26-717, 39-26-704, 39-26-705, and 39-26-718 for a listing of tax exemptions. See C.R.S. 39-26-102 for definitions.

HOME-RULE AREAS

All references in this FYI to local sales and use taxes apply only to city, county and special district sales and use taxes that are administered and collected by the State of Colorado.

Home-rule cities that collect their own local sales taxes should be contacted directly for their tax laws and regulations. For information on which cities administer their own taxes and how they may be contacted, request "Colorado Sales/Use Tax Rates" (DR 1002). This DOR publication also contains information on local sales/use tax rates for all state-administered cities and counties. Visit our Web site at www.taxcolorado.com for a copy of the DR 1002.

DELIVERY INTO ANOTHER TAXING JURISDICTION

When an item is delivered by the seller's vehicle or by common carrier to the buyer's location, only the sales taxes that apply to the jurisdiction in which both the seller and buyer are located would be collected. For building materials or motor vehicle purchases where the seller does not collect the local sales tax of the buyer's home jurisdiction, Use tax may be due to the local jurisdiction where imposed. Local sales tax may be assessed

against a purchaser if it was due but not collected at the time of sale.

For example: If the buyer and seller are both in Parker (Douglas County), the seller would collect state, RTD/CD/FD, Douglas County tax and Parker city sales taxes. If the seller is located in Parker and the buyer is in Lakewood (Jefferson County,) and the item is shipped to the buyer via the seller's vehicle or common carrier, the seller would collect state and RTD/CD/FD tax (Those are the only two jurisdictions both seller and buyer have in common). Because Lakewood is a home-rule city which administers its own tax, that city would have to be contacted regarding use taxes for that city.

Another example: The seller's business is located in Colorado Springs, the buyer is in Denver and the articles are shipped by common carrier. The seller would collect only state sales tax. The seller would not collect RTD/CD/FD tax or city tax because the seller does not have a place of business in the district. The buyer would pay RTD/CD/FD Use Tax to Colorado and would contact the city of Denver for information on city use tax.

BUILDING MATERIALS

Cities and counties may impose a use tax on construction and building materials stored, used or consumed in their jurisdictions.

This use tax is paid directly to the city and/or county by the purchaser. Construction materials for projects for tax-exempt entities (e.g., government, tax-exempt charities, schools) are exempt from sales and use tax. To qualify for this exemption, the contractor must secure an Exemption Certificate from the Department of Revenue for **each** exempt project by submitting to the department Form DR 0172 "Contractor Application For Exemption Certificate." Form DR 0172 may be obtained on the Web at www.taxcolorado.com

No sales tax of any state-collected local jurisdiction is owed on the sale of construction materials if those materials are picked up by the purchaser, **and** if the

purchaser presents to the seller a building permit or other documentation acceptable to the local government where the purchase takes place, showing that a use tax has been paid or is required to be paid to another local entity [C.R.S. 29-2-105(2)]. If sales tax has been paid on the materials to another city or county, a credit must be given to the purchaser against the use tax liability. The amount of the credit must be equal to the amount of the sales tax paid to the local jurisdiction where purchased. For further information, see FYI Sales 6 "Contractors and Retailer-Contractors."

MOTOR VEHICLE SALES

For vehicles requiring registration, local tax liability depends upon where the purchaser resides, not the address of the seller. (Boats, airplanes and camper slide-ins are not considered motor vehicles. This section does not apply, even if they are sold in conjunction with a trailer or other vehicle requiring license plates.) Motor vehicles are subject to state and local sales taxes at the time of purchase. Some state-collected cities and counties impose local use tax on vehicles. See FYI Sales 62 "Guidelines For Determining When to Collect State-Collected Local Sales Tax."

There are situations where the seller does not collect sales tax at time of sale. For example, in a motor vehicle sale between two private parties (private sales), the seller does not possess a license to collect sales tax on motor vehicles. Also, when the buyer and vehicle dealer are based in different taxing jurisdictions, the dealer may not have a license to remit the local use tax imposed by the city or county where the buyer resides. In such a case, dealers are required to collect local (and RTD/CD/FD, and RTA, if applicable) use taxes and send them directly to the motor vehicle department of the purchaser's county of residence with the title application. In a cash sale, the dealer doesn't collect use tax, purchasers buying a motor vehicle outside the limits of the local taxing entity where they reside will pay any local use tax when titling and registering the motor vehicle.

MOTOR VEHICLE LEASING

What Is a Lessor?

A "lessor" is defined as a leasing company, broker or dealership that prepares the lease and/or delivers the leased property to the lessee.

What is a Lessee?

A "lessee" is defined as the person or company that leases the property from the leasing company, broker or dealership that prepares the lease.

Tax on Motor Vehicle Leases

Motor vehicle leases are subject to the same sales and use taxes as motor vehicle sales. If the locations of the lessor and lessee are in different local jurisdictions, the lessor is not responsible to collect local use taxes of state-administered jurisdictions on the monthly lease payment. If the lessee's jurisdiction imposes a use tax on motor vehicles, such use tax is collected in full from the lessee prior to registration of the vehicle. If the lessee's jurisdiction has no use tax on motor vehicles, then no local tax is due on either lease payments or at the time of registration. See FYI Sales 56 for more information on motor vehicle leasing.

OUT-OF-STATE RETAILERS

If someone purchases goods from a vendor who is located outside of Colorado, the buyer must either pay sales tax to the vendor, if the vendor bills the buyer, **or** that individual must pay Colorado consumer use tax (and RTD/CD/FD and RTA tax, if the purchaser is based or resides within the district) to the Department of Revenue. In transactions involving out-of-state retailers, state-administered city and county use tax is not applicable. Purchasers may not refuse to pay Colorado sales tax or special district sales tax because the retailer is out-of-state. These purchases are subject to tax, unless otherwise exempt. For further information, see FYI Sales 5 "General Sales Tax Information for Out-of-State Businesses." Also, see DR 1002 "Colorado Sales and Use Tax Rates" located on the Web at www.taxcolorado.com

DENVER METRO AREA SPECIAL TAXING DISTRICT

Most of the Denver metropolitan area is located within a special tax district. For more information regarding special district taxes and special district tax boundaries see publication DR 1002 "Colorado Sales and Use Tax Rates" located on the Web at www.taxcolorado.com

Because the RTD/CD/FD has a use tax, businesses not located in the RTD/CD/FD that make regular shipments into the district or have established nexus (a sales presence) in the district should collect the RTD/CD/FD sales tax and remit it on their sales tax returns. If the RTD/CD/FD tax is not collected by the vendor, the consumer located within the district must pay use tax, using a use tax return (see section entitled, "How To Remit Use Taxes").

SPECIAL NOTE: INSTANCES WHERE SALES TAX, NOT USE TAX, IS OWED

Inventory Items

A retailer purchasing goods that are for resale may buy the goods tax exempt. A Colorado sales tax license is required for such purchases. Retailers purchasing items for their own use (e.g., office supplies, furniture, display racks, etc.) must pay all applicable sales taxes on those items at time of purchase. If items are purchased for resale, and then later removed from inventory for the retailer's use, state and local sales tax, **not use tax**, is then due on those items that were purchased from a vendor located in the same jurisdiction as the business is located. Remit the tax on line 10 of the "Retail Sales Tax Return," Form DR 0100. If the items were purchased from a vendor located in another jurisdiction, then only use tax would be due. Example: A vendor located in the city of Thornton takes three items out of inventory for use in the business. Item one was purchased from a vendor in Thornton. Item two was purchased from a vendor in Denver. Item

three was purchased from a vendor in Nebraska. Sales tax was not paid when the items were first purchased because they were purchases for resale.

State, RTD/CD/FD, and county sales tax are all due on item one. State and RTD/CD/FD sales tax are due on item two, but not city and county sales taxes because the original vendor was not located in Thornton. Because item three is purchased out-of-state, State and RTD/CD/FD use tax are due on the purchase price of that item; but city and county sales taxes are not due because the original vendor is not located in either the city or county. However, city and county use tax is due on Items two and three IF the city and county levy a use tax for the goods.

Real Property

Sales tax is not normally owed in real estate transactions. However, when any tangible personal property (e.g., furniture, fixtures and equipment) not permanently attached to the property is part of the sale, state and local sales taxes are due on those furnishings. Some examples of real estate sales where this might occur include furnished resort condominiums, restaurants containing food preparation equipment and dining furniture, hotels with furnished rooms, and office buildings with office furnishings and equipment included. Sales tax is **only** due on the tangible personal property accompanying the real estate sale, **not** on the real estate itself. In most cases, the seller or real estate agent does not collect sales tax on personal property at the time of the transaction. In such cases, the purchaser is responsible for remitting the sales tax, **not use tax**, to the state. The purchaser must remit this tax on the Form DR 0100-A "Retail Sales Tax Return For Occasional Sales." The return and tax payment are due 20 days after the purchase date.

HOW TO REMIT USE TAXES

Businesses

For businesses, state and RTD/CD/FD use tax payments must be remitted to the Colorado Department of Revenue with a "Consumer Use Tax Return," Form DR 0252. If your total use tax owed is less than \$300 per year, the return is filed on an annual basis, due on January 20 of the following year. If total tax owed exceeds \$300 at the end of any month, the return is due by the 20th of the following month. Penalty and interest are due on late payments.

Individuals

For individuals, state and RTD/CD/FD use tax payments must be remitted to the Colorado Department of Revenue with a Form DR 0252 "Consumer Use Tax Return" and DR 0251 "RTA Consumer Use Tax Return" for the Rural Transportation Authority use tax. Individual use tax is due by April 15 for the prior tax year. For example, state and RTD/CD/FD owed on items purchased during 2004 must be remitted to the Department of Revenue on or before April 15, 2005.

Motor Vehicles

Local use tax on motor vehicles will be collected by county clerks when the vehicles are registered. Other use taxes owed to cities and counties are to be paid directly to that jurisdiction. Contact the appropriate local jurisdiction for details.

FURTHER INFORMATION

FYIs and commonly used forms are available on the Web at www.taxcolorado.com

The Colorado Department of Revenue also provides automated sales tax information for and about businesses at www.taxview.state.co.us

This system includes:

- Colorado Sales Tax Rates - finds specific city, county, and special district rates.
- Verification of Sales Tax License Exemption Numbers - determines whether a Colorado sales tax license or exemption certificate is valid.
- Tax Rates by Account Number - finds sales tax rates and locations for specific sales tax accounts.

For additional tax information visit the "Tax Information Index" which covers a variety of topics including links to forms, publications, regulations, statutes and general questions and answers. The "Tax Information Index" is located at www.taxcolorado.com

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, has not formally reviewed and/or approved these FYIs.